



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/172065

PRELIMINARY RECITALS

Pursuant to a petition filed February 16, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Waushara County Human Services in regard to FoodShare benefits (FS), a hearing was held on March 22, 2016, at Oshkosh, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Waushara County Human Services
213 W. Park Street
PO Box 1230
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is currently a resident of Fond Du Lac County and a FoodShare household size of 1.
2. Petitioner was sent a FoodShare overpayment notice, dated November 19, 2015. It informed Petitioner that she had been overissued FoodShare in the amount of \$776.00 during the period of March 1, 2105 through June 30, 2015.

3. The reason for the overissuance alleged here is that Petitioner had a job that ended in November 2014; that was reported at a November 2014 review. Petitioner began new employment in December 2014 and received the first paycheck from that employer in January 2015.
4. Petitioner's gross income for January 2015 was \$1023.61. Her gross for February 2015 was \$1480.72. This was not reported to the agency.
5. 130% of the Federal Poverty Level for a household of 1 was \$1265 at the time of the overpayment involved here. See FoodShare Wisconsin Handbook (FSH), §8.1.1 of Release 14-03.

DISCUSSION

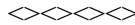
The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. §273.18(b), see also FoodShare Wisconsin Handbook (FSH), §7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. §273.18(b); see also FSH, §7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FSH, §7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

Also applicable here are the following:

7.3.2.1 Client and Non-client Error

When calculating the overissuance, consider the FS group's reporting requirements. Do not use income or expenses, or changes in income and expenses that were not reported and were not required to be reported.

...
FSH, §7.3.2.1.



6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

If a food unit has reported total income exceeding 130% FPL for their food unit size, and the food unit remains open for FS due to categorical eligibility, the food unit has fulfilled their change reporting requirement for the remainder of the FS certification period.

The 130 % FPL reduced reporting level is based on the food unit size determined at the most recently completed certification.

...
FSH, §6.1.2.2.

In reviewing this overpayment calculation the agency has erred in determining the start date of the overpayment. The overpayment should not have started until April 2015 as income was not over 130% of the FPL until February 2015; this should have been reported by March to affect April 2015 benefits.

I also note that the agency used the January 2015 income of \$1023.61 across all of the months of the overpayment. Though it will not affect calculations here; the agency should note that \$1023.61 was not Petitioner's income in any month except January 2015 and it should use actual income in the future.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner was overissued FoodShare but beginning with the month of April 2015 not March 2015.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to delete the overpayment amount (\$194) for the month of March 2015 from overpayment claim # [REDACTED] making the balance \$582.00. This must be done within 10 days of the date of this Decision.

In all other respects, this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

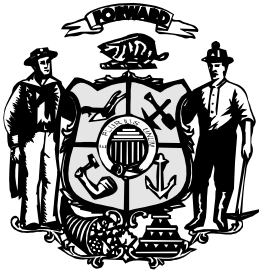
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of April, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 14, 2016.

Waushara County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability